

**BEFORE**  
**THE PUBLIC SERVICE COMMISSION**  
**OF SOUTH CAROLINA**

**DOCKET NOS. 2017-207-E, 2017-305-E, AND 2017-370-E**

**IN RE:** Friends of the Earth and Sierra Club, )  
Complainant/Petitioner v. South Carolina )  
Electric & Gas Company, )  
Defendant/Respondent )  
)  
)

**IN RE:** Request of the South Carolina Office of )  
Regulatory Staff for Rate Relief to SCE&G )  
Rates Pursuant to S.C. Code Ann. § 58-27- )  
920 )  
)  
)

**MOTION TO COMPEL  
REMOVAL OF  
CONFIDENTIAL  
DESIGNATION**

**IN RE:** Joint Application and Petition of South )  
Carolina Electric & Gas Company and )  
Dominion Energy, Incorporated for Review )  
and Approval of a Proposed Business )  
Combination between SCANA Corporation )  
and Dominion Energy, Incorporated, as May )  
Be Required, and for a Prudency )  
Determination Regarding the Abandonment )  
of the V.C. Summer Units 2 & 3 Project )  
and Associated Customer Benefits and Cost )  
Recovery Plans )  
)

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**SOUTH CAROLINA OFFICE OF REGULATORY STAFF'S MOTION TO COMPEL  
REMOVAL OF CONFIDENTIAL DESIGNATION**

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**Introduction**

The South Carolina Office of Regulatory Staff (“ORS”) respectfully moves<sup>1</sup> the Public Service Commission of South Carolina (“Commission” of “PSC”) for an expedited review and order<sup>2</sup> compelling South Carolina Electric & Gas Company (“SCE&G”) to remove the confidential designation from documents produced in discovery that do not have a legitimate basis for being marked confidential. Additionally, ORS respectfully moves the Commission for an order that removes the confidential designation from the documents<sup>3</sup> filed under seal with this Motion in Exhibits A, B, C and D. The public and ratepayers, along with this Commission, deserve the full story of what transpired with the failed nuclear project and that process is severely hindered by SCE&G’s abuse of confidential designations.

### **Background**

SCE&G has designated an unreasonable amount of discovery responses as confidential, and used overbroad designations of confidentiality with regard to depositions, without any good faith basis for doing so. Many of the responses do not even contain confidential information; documents such as prefiled public testimony, Commission Orders, publicly filed petitions, and privilege logs have all been marked confidential. This blatant misuse of the confidential designation prevents the complete factual background of this case from being used in preparation and presentation of the issues to the intervenors and to this Commission. SCE&G has clearly failed to perform a good faith review of the discovery responses prior to marking them confidential. Instead of this blanket designation of confidentiality the burden is on SCE&G, not ORS, to in good faith identify and show that the information and documents designated are deserving confidential treatment.

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<sup>1</sup> See S.C. Code Ann. Regs. 103-835 (2012); Rules 26 and 37, SCRPC; S.C. Code Ann. §§ 58-4-50, 58-4-55, 58-27-40, 58-27-160, 58-27-1570, 58-27-1580, 58-27-2090, 58-33-230, and 58-33-277 and other applicable law,

<sup>2</sup> As time is of the essence, ORS would request that SCE&G be ordered to identify what is confidential and what is not confidential within seven (7) days of receiving the Order.

<sup>3</sup> As discovery review is ongoing, ORS reserves the right to later petition this Commission for additional removal of confidential designations if necessary.

In light of ORS's request that SCE&G be ordered to identify what is and what is not actually confidential, ORS has identified certain documents provided in the discovery responses that should be public.

#### **I. Confidential Responses Related to the Bechtel Assessment**

SCE&G's blanket confidentiality designation is particularly egregious because it has selectively decided to publicly file certain documents when it believes that public disclosure of documents benefits its own interests. For example, on June 11, 2018, SCE&G filed a response to an ORS motion to compel and asserted that it wanted to provide the "full account of the Bechtel engagement and assessment."<sup>4</sup> As part of that filing, SCE&G carefully released some documentation related to the Bechtel assessment in order to craft a narrative in their favor, without providing the full picture of what actually transpired. SCE&G continues to claim that numerous Bechtel related documents are confidential, including the documents filed under seal as Exhibit A to this Motion. While ORS has identified certain Bechtel related documents for the Commission to review, ORS is seeking that all information provided by SCE&G related to Bechtel be made available for open use in these proceedings as it is in the public interest that there be full accountability and transparency regarding the Bechtel assessment and the prudence of SCE&G's decisions. ORS believes it is important because the information was withheld from this Commission and these documents demonstrate a clear intent to hide information from the Commission. It is important that the regulatory process not be further subverted.

#### **II. Documents Stored in SCE&G's "ORS New Nuclear Development Data" Electronic Reading Room**

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<sup>4</sup> See Response to Motion to Compel Discovery Responses and Production SCE&G and Dominion Energy filed in these consolidated dockets on June 11, 2018.

SCE&G maintains an electronic reading room titled “ORS New Nuclear Development Data” (“NND e-Room”) that was created in 2009 to provide ORS’s out of-state consultants with a convenient way to review material related to the construction of the two units. ORS, however, is prohibited from printing and using any material from the NND e-Room because SCE&G deemed the material confidential when the new units were under construction. There is no reason why this information spanning the course of the project should continue to be kept confidential. Due to the fact that construction has been halted and will not resume, ratepayers and this Commission should be afforded the benefit of full access to this material.

### **III. Confidential Responses to ORS Utility Rates Request #9**

In response to ORS Utility Rates Request #9 (URR #9), SCE&G provided documentation that it marked confidential concerning fraudulent activity by one of SCE&G’s vendors. ORS seeks a ruling to make URR #9 responses public. This information is dated and should no longer be marked confidential. Attached to this Motion as Exhibit B, ORS is providing under seal those documents responsive to URR #9 that should be public for the Commission’s review.

### **IV. Privilege Logs Themselves Marked as Confidential**

SCE&G’s overbroad confidential designations extend even to designating its privilege log as confidential. Pursuant to Commission Order No. 2018-73-H, SCE&G provided a privilege log on July 6, 2018 of withheld documents which was subsequently updated on August 10, 2018 and August 17, 2018. Each version<sup>5</sup> of the privilege log has been marked as confidential. There is no basis for marking the privilege logs as confidential. The sole purpose for a privilege log is to identify a document while concealing all privileged information, therefore nothing contained in the privilege log is subject to a confidential designation.

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<sup>5</sup> The most recent version of the confidential privilege log is attached as Exhibit C, which is being filed under seal.

## V. ORS Exhibits GCJ – 2.2.A, 2.17.A, and 2.20.A Filed Under Seal

On September 24, 2018, along with its Direct Testimony ORS filed as exhibits under seal three documents received from SCE&G through discovery<sup>6</sup> that SCE&G claims are entirely confidential. These three exhibits, GCJ – 2.2.A, GCJ – 2.17.A, and GCJ – 2.20.A, correspond to the Direct Testimony of Gary C. Jones, P.E., and relate to an additional exhibit, GCJ – 2, that was filed in a public, redacted format and also under seal. GCJ – 2, attached under seal as Exhibit E is a timeline that Witness Jones created that represents the progression of the V.C. Summer Nuclear Project, and is only marked confidential due to the assertions of the confidentiality by SCE&G of GCJ – 2.2.A, GCJ – 2.17.A, and GCJ – 2.20.A.<sup>7</sup> The first of these two confidential exhibits are dated communications, from 2013 and 2014 respectively, that speak to the scheduling issues early on in the construction of the new units. There is no basis for the confidential designation, neither document contains any trade secrets or legitimate commercially sensitive data. Exhibits GCJ – 2.2.A and GCJ – 2.17.A address the scheduling delays of a now defunct project and are necessary in explaining the full story behind what happened at V.C. Summer, therefore there is no reason they should be kept hidden from this Commission and SCE&G's ratepayers. Exhibit GCJ – 2.20.A is a 2015 internal communication from a high-level employee at SCE&G that does not contain any privileged material, only that employee's impression of the project. A designation of confidentiality cannot be used simply because the material is embarrassing to the company, there is no viable basis for confidentiality of the email exchange portrayed in GCJ – 2.20.A.

### Support for the Motion

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<sup>6</sup> ORS received GCJ – 2.2.A, GCJ – 2.17.A, and GCJ – 2.20.A through discovery in the consolidated Circuit Court Docket *Lightsey v. SCE&G*, 2017-CP-25-335. Pursuant to Case Management Order No. 3, ORS is able to use materials discovered through the Circuit Court proceeding in Related Proceedings such as this matter before the Commission.

<sup>7</sup> ORS seeks to file the unredacted GCJ – 2 publicly, and will be able to do so once the confidential designation has been removed from GCJ – 2.2.A, GCJ – 2.17.A, and GCJ – 2.20.A.

SCE&G has abandoned the construction of Units 2 and 3. On December 27, 2017, SCE&G requested the Nuclear Regulatory Commission's approval to withdraw its combined operating licenses for VCSNS Units 2 and 3. Thus, to the extent the information currently maintained and designated by SCE&G as confidential was previously entitled to protection from public disclosure, in light of the decision to abandon the construction, this information should no longer continue to be kept hidden from regulators and the public.

This Commission has previously found that it is reasonable to revoke confidential treatment of documents related to the terminated nuclear project as it is in the public's interest and revoking the confidential treatment will assist ORS in pursuing rate relief for SCE&G customers.<sup>8</sup> ORS is making this request so that the parties may see, use, and respond to the discovery and depositions in these proceedings without a ridiculous number of filings under seal and an unsubstantiated blanket confidential designation by SCE&G, without showing the need and legitimacy of confidentiality under the circumstances of complete abandonment of the project. There is no way for a public hearing to be conducted if a substantial amount of the evidence is marked confidential. In order for the Commission to make fully informed decisions in these combined dockets the entire truth must be brought to light. It is important that material adverse information not be the basis of confidentiality and withheld from intervenors and from open use in these proceedings and with this Commission.

### **Conclusion**

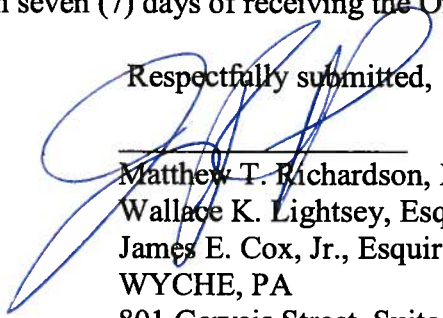
Based on the aforementioned, ORS respectfully submits it is just, reasonable, and in the public interest that the Commission grant this Motion and remove the confidential designation from the attached documents filed under seal, all Bechtel related documents, documents in the NND e-

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<sup>8</sup> See Order No. 2017-337 in Docket No. 2017-138-E

Room, as well as SCE&G's privilege log and lift the blanket designation as confidential and compel SCE&G to identify specific documents and portions of depositions with legitimate claims of confidentiality. As time is of the essence, ORS requests that SCE&G be ordered to identify any documents that are truly confidential within seven (7) days of receiving the Order.

Respectfully submitted,



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